IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1062 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant
Versus
DUDA BHIMA CHAUHAN & 7 - Respondents

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Appearance :
MR KC SHAH, ADDL PUBLIC PROSECUTOR for Appellant
MR HASIT DILIP DAVE for Respondents : 1 to 4, 6
MR TUSHAR L SHETH for Respondents: 5,7, 8

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 19/09/2007

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. Leave to appeal granted. Appeal is admitted. Learned advocate Mr.Hasit Dilip Dave for respondents No.1 to 4 and 6 and learned advocate Mr.Tushar L.Sheth for respondents No.5, 7 and 8, waive service.

2. Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure, 1973, against the judgment and order delivered by the Additional Sessions Judge and Presiding Officer, Fast Track Court No.9, District: Rajkot at Gondal, on 27th January, 2005, in Sessions Case No.80 of 2003, whereby all the eight present respondents, being accused of the Sessions Case, came to be acquitted by the trial Court for the charges leveled against them under Section 302, 201, 147, 148, 149 and 120-B, of the Indian Penal Code as well as for the charges under Section 37(1) and 135 of the Bombay Police Act.

3. According to the prosecution case, deceased in the incident are Lakshmiben, daughter of respondent No.1 and one Shamjibhai alias Jitendra alias Nitin, and as per the allegation of the prosecution, both had eloped and had run away together. Respondent No.1 –

Dudabhai Bhimabhai Chauhan is resident of village Khadkhad and other respondents, except respondents No.5, 7 and 8, are his relatives. The relationship between both the deceased was not approved by respondent No.1 and his family members and therefore, with an intention to get married, around 28th June, 2003, both the deceased eloped. Respondent No.1 – Dudabhai gave a complaint before Vadia Police Station on 1st July, 2003, against deceased Shamjibhai alias Jitendra under Section 363 and 366 of the Indian Penal Code for abduction of Lakshmiben by deceased Shamjibhai. While this crime was being investigated, it was found by Police on 1st July, 2003, that one Gadhvibhai, Sarpanch of village Charansamadhiyala informed the Police at about 16:45 hrs. that in the field of Bhagwanjibhai, one pair of ladies Chappals, Saree (Chunri), one water bottle, one pair of male Chappals, and blood stains were found. In Jetpur Taluka Police Station, necessary entry of this information was made and an inquiry was entrusted to Head Constable Bhalgamadia. Head Constable Bhalgamadia visited the field of

Bhagwanjibhai at village Charansamadhiyala and from the Well situated in the field, dead bodies of a female and a male were taken out. The bodies were sent to the Government Hospital, Jetpur, for post-mortem. The investigating officer who was investigating the Crime Register No.I-38/2003 recorded against deceased Shamjibhai at the instance of respondent No.1, was informed about this fact and therefore, said investigating officer Mr.V.B.Jadeja, Police Sub Inspector, Jetpur Taluka Police Station, inquired from relations of deceased from village Khadkhad. Both the dead bodies were identified to be of Lakshmiben and Shamjibhai. There were injuries on both the bodies by sharp edged weapons. On behalf of the State, therefore, PSI Mr.V.B.Jadeja gave a complaint on 1st July, 2003. It was recorded as Crime Register I-119/2003 against unknown persons for the offences punishable under Sections 302, 201 of the Indian Penal Code etc. The said complaint is on record at Ex.55. Investigation therefore was entrusted to PSI Mr.Jadeja. He visited the place from where the dead bodies were found. Panchnama of scene of offence

was drawn. Inquest Panchnamas were drawn. From the place, Muddamal articles including sample earth as well as blood-stained earth was collected, and chargesheet against in all eight persons was submitted. During investigation, it was found that on 29th June, 2003, deceased Shamjibhai had visited PW 24, Jayantilal Narshibhai, at village Devda and according to the advise of Jayantibhai, Shamjibhai and Lakshmiben had stayed at the residence of one Gangabhai. On 30th June, 2003, both the deceased were seen at the Bus Stand of village Devda and were seen going towards the Sim of village Devda. It was also found during investigation that both the deceased had gone to the field of Haribhai Kababhai, PW 26, and stayed there for some time. Family members of both the deceased were in search of Lakshmiben and Shamjibhai. According to the prosecution case revealed during investigation, the present accused, on receiving information about both the deceased, in one rickshaw belonging to the accused No.4, went to village Charansamadhiyala and inquired about Shamjibhai and Lakshmiben. The accused formed two

groups for search of Shamjibhai and Lakshmiben. According to the further prosecution case, at that time, both the deceased were at the field of PW 16, Haribhai, and noticed that the accused were searching them and therefore, they ran towards the field of PW 14, Bhagwanjibhai, and concealed themselves in a room situated at the field. The accused apprehended both the deceased and they were beaten at that spot. Thereafter, the accused No.1, Dudabhai, and accused No.2, Pravinbhai, inflicted knife blows on both deceased and dead bodies were thrown in the Well. Accused thereafter absconded from that place. So thus, PW Bhagwanjibhai noticed blood stains, pairs of male and female Chappals, water bottle, etc., at his field near Well and informed the Police. According to the prosecution case, as per the information received under Section 27 of the Indian Evidence Act from the accused Nos.1 and 2, from the said Well, the accused Nos.1 and 2 discovered one knife from the bottom of the Well and indicated the place of offence as well as the manner in which the crime was committed.

4. On chargesheet being filed in the Court of learned

Judicial Magistrate, First Class, a Criminal Case was registered and said Criminal Case was committed to the Court of Sessions, Rajkot, at Gondal, and was registered as Sessions Case No.80 of 2003. The learned Additional Sessions Judge, Rajkot, at Gondal, framed charges for the abovesaid offences against all the accused vide Ex.1 on 2nd January, 2004, and each of the accused pleaded “not guilty” on the Charge being read over to them. The accused were put to trial and prosecution examined as many as 31 witnesses and produced on record, voluminous documentary evidence to prove its case. Thereafter, the learned trial Judge recorded statements of the accused under Section 313 of the Code of Criminal Procedure. Denying the evidence of the prosecution, it was submitted by the accused that a false case had been filed against them. The learned trial Judge thereafter heard the learned APP as well as the defence counsel and came to the above conclusion and hence this Appeal.

5. Learned APP Mr.K.C.Shah for the State, learned advocate Mr.Hasit Dilip Dave for respondents No.1 to

4 and 6 and learned advocate Mr.Tushar L.Sheth for respondents No.5, 7 and 8 were heard in detail in respect of this Appeal. All the learned counsels appearing in the matter requested this Court to decide this Appeal finally as Record and Proceedings of the trial Court are available with this Court and that they would assist and supply extra copies of the evidence recorded during the trial and documents produced, for the appreciation of this Court. Granting request of the learned counsels appearing in the matter, this Appeal was heard finally.

6. We have gone through threadbare scrutiny of the evidence recorded during the trial and scanned each corner of the record and proceedings of the trial Court. We have also taken into consideration vital features of the matter and reasonable probabilities arising out of the circumstances of the trial. We have weighed and evaluated the contentions raised on behalf of the appellant-State and the respondents. This is an Appeal against acquittal and therefore, after re-appreciating the evidence recorded during the trial, we have carefully scrutinized the reasons

assigned by the trial Court for acquitting the respondents.

7. Appreciating the evidence of prosecution during trial, it appears that most of the witnesses examined have not supported the prosecution case.

PW 1, Bharatbha Patubha, examined at Ex.17, is the witness who informed Jetpur Taluka Police Station, being Sarpanch of village Charansamadhiyala, that in the field of PW Bhagwanjibhai Ravjibhai Vaghani, Muddamal articles and blood stained earth were noticed. However, the witness has not supported the prosecution case. In addition to this, he is also Panch of Panchnama of scene of offence, Ex.60. The witness did not support the said Panchnama and was declared hostile. PW 2, Dhirubhai Rajabhai, examined at Ex.19, is also Panch of Panchnamas, Ex.60, Ex.61 and Ex.64. Panchnama Ex.60 is a Panchnama of scene of offence. Ex.61 Panchnama is a Panchnama by which from the Well of field of Bhagwanjibhai, one sheath of knife was recovered, while Panchnama Ex.64 is the Panchnama by which accused Dudabhai and accused

Pravinbhai gave information to the Police that they were willing to show the weapons used in the crime and thereafter the Panchas and the Police went in the Sim of village Charansamadhiyala and a knife was recovered by those accused from the Well from which dead bodies were found. However, PW 2, Dhirubhai Rajabhai, did not support the prosecution case in any manner in respect of all the three Panchnamas and was declared hostile. PW 3, Dhirubhai Bhagwanbhai, examined at Ex.20, is also a Panch of the Panchnama Ex.58, which is Inquest Panchnama of the dead body of both the accused. However, PW 3 also did not support the prosecution case in any manner. PW 4, Bhagwanjibhai Ukabhai, examined at Ex.21, is also a Panch of Inquest Panchnama, but he also did not support the prosecution case. PW 5, Bhartiben Arvindgiri, Panch of Inquest Panchnama, examined at Ex.22, also did not support the prosecution case. PW 6, Jorubhai Emalbha, is the Panch witness of Panchnama by which clothes of the deceased were attached by the Police. This witness did not support the prosecution case and has been declared hostile.

PW 7, Kanjibhai Ghelabhai, Ex.24, is also the Panch witness of Panchnama Ex.62, by which clothes of deceased were attached by the Police. The witness has also turned hostile and did not support the prosecution case. PW 8, Ranjitsinh Nanbha Jadeja, the Panch of Panchnama Ex.58, by which the dead body of deceased Shamjibhai was identified by brother of the deceased, is examined at Ex.25, but the witness has not supported the prosecution case. PW 9, Manubhai Ambabhai, examined at Ex.26, is Panch of two Panchnamas at Ex.65 and 66. The witness did not support any of the Panchnamas by which the clothes of the accused were attached by the Police on 3rd July, 2003, and according to the prosecution case on the clothes of accused Mansukhbhai Khimjibhai, Dudabhai Bhimabhai, Pravinbhai Rambhai, there were stains of blood. The second Panchnama is in respect of one screw driver which was presented by the accused from rickshaw No.GJ-14-T-5010 alleged to have been used by the accused. This Panch witness has not supported the prosecution case in any manner. PW 10, Chandubhai Veljibhai, is the Panch of Panchnama

Ex.67, by which accused Raghav Khimabhai indicated to the Police the place of crime, i.e. a Well situated in the field of PW Bhagwanjibhai, but the witness stated that his signature was obtained on the said Panchnama Ex.67 and he did not know anything except signing the Panchnama. PW 11, Bhayabhai Bavabhai, examined at Ex.28 is also Panch of Panchnama Ex.68 whereby it is the prosecution case that on 4th July, 2003, accused Raghav Khimjibhai was present and Police attached his clothes. The witness did not support the contents of the Panchnama and turned hostile.

PW 12, Ravjibhai Chanabhai, examined at Ex.29, is the younger brother of deceased Shamjibhai alias Nitinbhai. He deposed to the effect that deceased Nitinbhai was missing and thereafter, he identified the dead body. There were injuries on the dead body of Nitinbhai and also on the dead body of daughter of accused Duda Bhima. His evidence is not useful to the prosecution in any manner. PW 13, Suresh Chanabhai, examined at Ex.33, is also brother of deceased Shamjibhai alias Nitinbhai. He deposed to the extent

that after deceased Nitinbhai was missing, the accused were searching him. The witness stated that in his view, since Nitinbhai had an affair with Lakshmiben, the accused had killed Nitinbhai. Nothing useful could be proved by the prosecution through this witness except the opinion of the witness about the death of his brother.

PW 14, Bhagwanbhai Ravjibhai, examined at Ex.34, is the witness in whose field from Well, dead bodies were found and he had noticed pairs of Chappals, blood stains, etc. near the Well. According to him, the Sarpanch was informed about this fact and about the fact that dead bodies were found in his Well. He noticed dead bodies from the distance of ten feet. He has not been cross-examined by the defence.

PW 15, Shardaben Haribhai, examined at Ex.35, is the witness who, according to the prosecution case, had seen both the deceased in the Sim of village Charansamadhiyala and in the field of Bhagabhai at about 4:30 p.m. Thereafter, according to the prosecution case, this witness also noticed that some

persons came in rickshaw and alighting from the rickshaw, they chased both the deceased. After apprehending the deceased, these persons started beating both the deceased. However, in deposition before the Court, this witness did not support this prosecution version and refused to have seen the deceased or anything else. She was declared hostile.

PW 16, Haribhai Kababhai, examined at Ex.36, is also a witness who had seen the deceased and the accused in the Sim of village Charansamadhiyala but he did not support the prosecution case.

PW 17, Bhupatbhai Balubhai, examined at Ex.37, is a witness to whom Bhagabhai and other persons gave information about the dead bodies in the Well of the field of Bhagabhai and thereafter, the witness visited the field of Bhagabhai. However, this witness has also not supported the prosecution case.

PW 18, Chaganbhai Raiyabhai, examined at Ex.38, is a person resident of village Charansamadhiyala and had visited the place where the dead bodies were

found, along with the Sarpanch Bharatbhai and Bhagabhai, but the witness did not support the prosecution case. According to the prosecution case, in his presence, both the dead bodies were taken out of the Well.

PW 19, Nazabhai Govabhai, examined at Ex.39, is the person who went in the Well and recovered the sheath of knife and one Chappal of black colour from the Well. This witness also did not support the prosecution case.

PW 20, Vipul Bhagwanjibhai, examined at Ex.40, is the witness and son of Bhagwanjibhai, from whose field the dead bodies were recovered. According to him, till 30th June, 2003, there was nothing in the Well in his field.

PW 21, examined at Ex.41, Maheshbharthi Nagbharthi, is the Panch of Panchnama Ex.67, by which accused No.4, Raghav Khima, indicated the scene of offence to the Police and Panch on 4th July, 2003. The witness did not support the prosecution

case. PW 22, examined at Ex.42, Hareshbhai Babubhai Parmar, is the Panch of Panchnama Ex.68. It is the prosecution case that by this Panchnama, on 4th July, 2003, clothes of accused Raghav Khima were attached by the Police. The witness stated that he had signed the Panchnama at the instance of Police and except that, he did not know anything.

PW 23, Dr.Nikita Bharatbhai, examined at Ex.43, conducted the post mortem of both the dead bodies on 2nd July, 2003, as forwarded to her by Jetpur Taluka Police Station through Head Constable R.N.Bhalgamadia. The witness noted external injuries on both the dead bodies and thereafter, without conducting the internal examination, she adviced Jetpur Taluka Police Station to forward both the dead bodies to FSL at Rajkot for ascertaining the exact cause of death. The PM notes produced on record by this witness are at Ex.44 and Ex.45. In PM notes, in both the cases, the cause of death was “shock as a result of hemorrhage due to stab injury to right kidney and mesentric vessels”, in case of Shamjibhai, whereas the cause of death was “shock as a result of

hemorrhage due to stab injury to mesentric vessels" in case of Lakshmiben.

PW 24, Jayantilal Narshibhai, examined at Ex.48, according to the prosecution case, had seen both the deceased on 29th June, 2003, and had talked to them. According to the prosecution case, both the deceased inquired from the witness about a night stay in village Devda and the witness advised them to have a stay at the residence of Gangabhai. The witness Jayantilal Narshibhai however did not support this prosecution case and denied to have seen any of the deceased and having any conversation with them.

PW 25, Kalubhai Jethirambhai Devmurari, examined at Ex.49, is a witness from village Devda. According to the prosecution case, on 30th June, 2003, this witness had seen both the deceased near Bus Stand because his hotel was situated at the Bus Stand. According to the prosecution case, this witness, at 6:00 a.m. had opened his hotel and found that both the deceased boarded in one S.T. Bus and thereafter immediately alighted and went towards the Sim of

village. Thereafter, some three to four persons came in a rickshaw, took tea in his hotel and inquired about the deceased. The accused were in search of Shamjibhai and Lakshmiben and were conversing amongst themselves to kill both of them. Deposing before the Court, the witness stated that during the whole day many customers used to visit his hotel and he was not sure that he had seen the deceased or the accused who had come in a rickshaw. The witness was declared hostile.

PW 26, Dineshbhai Manubhai, examined at Ex.50, is a Paan Beedi shop owner of village Charansamadhiyala. According to the prosecution case, on 30th June, 2003, he had seen the accused in a rickshaw in search of the deceased. The witness did not support the prosecution case.

PW 27, Shamjibhai Manjibhai, resident of Thana Galol, examined at Ex.51, is the Panch of Panchnama Ex.70 by which it is the prosecution case that the accused Mithunbhai Premjibhai, Kalu alias Haresh Dahyabhai, Jagdish Mavji and Mansukh Khimjibhai

show their willingness to indicate the scene of offence on 6th July, 2003 and thereafter all the four accused led the Panchas and Police to the scene of offence. However, this Panch witness stated in his deposition that at the instance of Police, he had signed the Panchnama Ex.70 on 6th July, 2003. Except that, he did not know anything nor in his presence any of the accused had shown the scene of offence. PW 28, Dipakbhai Chaganbhai, examined at Ex.52, is also second Panch of Panchnama Ex.70. He has also not supported the prosecution case.

PW 29, Vishwarajsinh Bhupendrasinh Jadeja, examined at Ex.53, is the complainant and investigating officer of the crime registered against the accused. On receiving information from Sarpanch of village Charansamadhiyala, he visited the field of PW Bhagabhai and found two dead bodies and therefore, he attached vide Panchnama, Chappals, Saree, etc. from the scene of offence. In this respect, an entry was made in Station Diary of Jetpur Taluka Police Station and thereafter, he filed his complaint before the Police Station on behalf of the State, which

he produced on record at Ex.54. Thereafter, he deposed the investigation he carried out all throughout till the chargesheet came to be filed. He has been cross-examined by the defence in detail.

PW 30, Manharbhai Karamshibhai Jadav, examined at Ex.82, was the then PSI of Vadia Police Station before whom, the accused No.1 gave his complaint against deceased Shamjibhai alias Nitinbhai, which was registered by him vide Crime Register No.I-38/2003 for the offences punishable under Sections 363 and 366 of the Indian Penal Code for abducting Lakshmiben, daughter of accused No.1. A copy of the said complaint is produced on record at Ex.83.

PW 31 and the last witness examined by the prosecution at Ex.84 is Keshubhai Valjibhai. The witness was incharge of Jetpur Taluka Police Station on 1st July, 2003, and PSI Jadeja gave his written complaint at about 3:05 p.m. Which he registered vide Crime Register No.I-119/2003. An entry was made in the Station Diary which he produced at Ex.57.

This, in all, is the evidence of the prosecution.

8. From the above, it transpires that the whole prosecution case was resting on circumstantial evidence in respect of murder committed by the accused of both the deceased. As aforesaid, none of the material witnesses, who had seen the deceased and the accused chasing the deceased, supported the prosecution case. The learned trial Judge took this fact into consideration and also discussed the evidence of investigating officer, PW 29, PSI Jadeja. In respect of discovery of knife at the instance of accused Dudabhai Bhimabhai and Pravin Ramabhai, the learned trial Judge, after appreciating the evidence, came to the conclusion that none of the Panchas of the said discovery Panchnama supported the prosecution case. The learned trial Judge also observed that the alleged discovery of weapon was a joint discovery by both the accused, and therefore, vitiated and that the place from which the knife was recovered was an open place and might have been visited by many persons before both the accused and Police visited the said place, i.e. the Well from which

the knife was recovered. The learned trial Judge, therefore, did not rely upon this piece of evidence. The learned trial Judge also observed that ancillary evidence as regards discovery of knife, i.e. evidence of Forensic Science Laboratory and the cut marks on the clothes of the deceased were of no avail to the prosecution to bring home the guilt of the accused. Likewise, the discovery of screw driver at the instance of accused Raghav Khimabhai also had no bearing on the facts of the case though said discovery was not proved because firstly, both the Panchas did not support the said Panchnama and secondly, there was no other evidence to indicate that the said screw driver was used for committing crime. In respect of the Panchnama of showing the scene of offence by accused Raghav Khimabhai, after appreciating the evidence on record, the learned trial Judge observed that the said evidence was not useful to the prosecution case, and in fact, the scene of offence was not a concealed place which could have been discovered at the instance of the accused as per the provisions of Section 27 of the Indian Evidence Act,

1872, and only supporting evidence in this respect is of PSI Mr.Jadeja on whose evidence, it cannot be said that because the accused showed the place of crime to the Panchas and Police, they were guilty of the crime and offence can be said to have been proved beyond reasonable doubt. Likewise, the Panchnama drawn on 6th July, 2003, by the investigating officer Mr.Jadeja at the instance of accused Nos.3, 5, 7 and 8 by which these accused demonstrated how they committed the crime was also hit by Section 25 of the Indian Evidence Act, 1872, and was not a useful piece of evidence for the prosecution to prove the charge against the accused beyond doubt. The learned trial Judge further observed that except the evidence of PSI Mr.Jadeja, the investigating officer, none of the witnesses supported the prosecution case nor anything useful could be found to connect the accused with the crime; while the evidence of the investigating officer suffered from the infirmities as aforestated and therefore, no reliance could be placed upon his evidence. The learned trial Judge, therefore, acquitted the accused for these reasons and held that the

prosecution was not able to prove the guilt of the accused beyond reasonable doubt.

9. This is an Appeal against acquittal and the scope of this Appeal is well-defined by plethora of precedents of the Apex Court. In respect of the scope of Appeal against the order of acquittal, the Apex Court observed in the matter of **AJIT SAVANT MAJAGAVI vs. STATE OF KARNATAKA**, as reported at **(1997) 7 SCC 110**, in para -16 as under :

"(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers, it possesses while hearing an appeal against the order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not

subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the court especially in the witness box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused."

When we re-appreciated the evidence, we also come to the conclusion that no second view was possible

than the view taken by the trial Court. When we scanned the reasons assigned by the trial Court for the acquittal, we find that the view taken by the trial Court is plausible, probable and reasonable. Unless and until the conclusions arrived at by the trial Court for acquittal are found manifestly erroneous, palpably wrong, perverse or demonstrably unsustainable, even if legitimate second view may be possible from the evidence on record, no interference is permitted in the order of acquittal of the trial Court in an Appeal against acquittal. In this view of the matter, we do not find any merit in this Appeal and hence, the following order.

The Appeal stands dismissed.

(J.R.Vora, J.)

(Smt.Abhilasha Kumari, J.)

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